

STATE OF MICHIGAN  
COURT OF APPEALS

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SCHNEIDER NATIONAL CARRIERS, INC.,  
SCHNEIDER TRANSPORT, INC.,  
SCHNEIDER NATIONAL BULK CARRIERS,  
INC., SCHNEIDER TANK LINES, INC.,  
and SCHNEIDER SPECIALIZED CARRIERS,  
INC.,

UNPUBLISHED  
August 5, 2003

Plaintiffs-Appellants,

v

STATE OF MICHIGAN DEPARTMENT OF  
TREASURY, CONSUMER AND INDUSTRY  
SERVICES DEPARTMENT and MICHIGAN  
PUBLIC SERVICE COMMISSION,

No. 208346  
Court of Claims  
LC No. 96-016473-CM

Defendants-Appellees.

ON SECOND REMAND

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Before: Fitzgerald, P.J., and White and Saad, JJ.

PER CURIAM.

This case is now before us for the third time. *Schneider Nat'l Carriers, Inc v Michigan*, Court of Claims No. 96-016473-CM, November 24, 1997 (*Schneider I*), aff'd *Schneider Nat'l Carriers, Inc v Michigan*, unpublished opinion per curiam of the Court of Appeals, issued May 14, 1999 (Docket No. 208346) (*Schneider II*), vacated after abeyance on the basis of *Yellow Freight System, Inc v Michigan*, 464 Mich 21, 33; 627 NW2d 236 (2001), and remanded for reconsideration 464 Mich 866 (2001), on remand *Schneider Nat'l Carriers, Inc v Michigan (On Remand)*, 247 Mich App 716; 637 NW2d 838 (2001) (*Schneider III*), vacated and remanded 468 Mich 862; 659 NW2d 228 (2003). On second remand, the Michigan Supreme Court has directed us to reconsider this matter in light of the United States Supreme Court's recent decision in *Yellow Transportation, Inc v Michigan*, 537 US 36; 123 S Ct 371; 154 L Ed 2d 377 (2002),<sup>1</sup> and to reconsider other preserved arguments of the parties not directly addressed by the Michigan Supreme Court or the United States Supreme Court. 468 Mich 862. We are further directed to address the impact, if any, on this matter of certain representations made by the Solicitor

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<sup>1</sup> Yellow Freight System, Inc., became Yellow Transportation, Inc., in January 2002.

General, in the Amicus Curiae Brief of the United States submitted to the United States Supreme Court in *Yellow Transportation, Inc, supra*. 468 Mich at 862-863.

On the same date that the Michigan Supreme Court issued its second remand order in this case, it issued a virtually identical remand order in the affiliated *Yellow Freight* case, directing that panel of this Court to address the same issues on remand. *Yellow Freight System, Inc v Michigan*, 468 Mich 862 (2003). On July 22, 2003, the *Yellow Freight* panel issued its majority and dissenting opinions on remand. *Yellow Transportation, Inc v Michigan*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 194703, issued 7/22/03) (*Yellow Transportation V*<sup>2</sup>). After reviewing Justice O'Connor's opinion in *Yellow Transportation IV*, the majority concluded that its initial decision in *Yellow Freight System, Inc v Michigan*, 231 Mich App 194; 585 NW2d 762 (1998) (*Yellow Freight II*), "stands on substantially stronger ground," leading it to reaffirm that portion of the opinion addressing the question whether the registration fees plaintiff paid to the state in advance for the 1992 registration year were "collected or charged as of November 15, 1991," in accordance with 49 USC 11506(c)(2)(B)(iv)(III).<sup>3</sup> *Yellow Transportation V*, slip op at 5-7.

The *Yellow Transportation V* panel also addressed, in Part III of its majority opinion, the impact of representations made by the Solicitor General in the Amicus Curiae Brief of the United States submitted to the United States Supreme Court in *Yellow Transportation IV*, and determined that the representations have no impact on the issue presented. *Yellow Transportation V, supra*, slip op 7-8.

*Yellow Transportation V* is controlling and resolves the dispositive issues in plaintiffs' favor in the instant case. Any remaining unresolved issues are rendered moot.

The Court of Claims' November 24, 1997, order is reversed to the extent that it granted summary disposition to defendants, and this matter is remanded to the Court of Claims for calculation of the fee refund to which plaintiffs are entitled. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald  
/s/ Helene N. White  
/s/ Henry William Saad

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<sup>2</sup> Adopting the opinion numbering system employed in earlier *Yellow Freight* opinions, the United States Supreme Court's opinion is designated as *Yellow Transportation IV*, and this Court's most recent opinion on remand is designated as *Yellow Transportation V*.

<sup>3</sup> For a comprehensive summary of the factual and procedural background of these cases, the reader is referred to *Yellow Transportation, supra*, 123 S Ct at 374-375.